

EXHIBIT H

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x
3 ROYAL PARK INVESTMENTS SA/NA,
et al.,

4 Plaintiffs,

5 v. 14 Cv. 8175 (SAS)

6 HSBC BANK USA, NATIONAL ASSOCIATION,

7 Defendant.

8 -----x
9 BLACKROCK BALANCED CAPITAL
PORTFOLIO (FI), et al.,

10 Plaintiffs,

11 v. 14 Cv. 9366 (SAS)

12 HSBC BANK USA, NATIONAL ASSOCIATION,

13 Defendant.

14 -----x
PHOENIX LIGHT SF LIMITED, et al.,

15 Plaintiffs,

16 v. 14 Cv. 10101 (SAS)

17 HSBC BANK USA, NATIONAL ASSOCIATION,

18 Defendant.

19 -----x
NATIONAL CREDIT UNION
ADMINISTRATION BOARD, et al.,

20 Plaintiffs,

21 v. 15 Cv. 2144 (SAS)

22 HSBC BANK US, NATIONAL ASSOCIATION,

23 Defendant.

24 -----x

April 9, 2015
4:35 p.m.

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SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

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1 Before:

2 HON. SHIRA A. SCHEINDLIN

3 District Judge

4 APPEARANCES

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10 Attorneys for Plaintiffs Phoenix Light and NCUA

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1 (Case called)

2 THE COURT: I have got four different cases and four
3 different plaintiffs' lawyers.

4 So I guess the first thing to say is I would like to
5 coordinate the discovery among the four cases as defendants
6 propose.

7 Does anybody disagree with that?

8 MR. DeLANGE: Your Honor, Timothy DeLange on behalf of
9 the BlackRock plaintiffs.

10 We don't disagree with coordinating schedules. In
11 fact, you will notice the schedules that plaintiffs submitted
12 were all the same schedule. We have met and conferred.

13 THE COURT: I didn't receive that many different ones.
14 I thought I just got Phoenix Light and BlackRock.

15 MR. DeLANGE: I believe you got one from Royal Park as
16 well.

17 THE COURT: And they are all the same?

18 MR. DeLANGE: They are all the same schedule.

19 THE COURT: Basically, what you are saying is I didn't
20 get one yet from NCUA.

21 MS. D'AQUILA: That's correct, your Honor. You have
22 not received one yet.

23 THE COURT: But it's a newer case. It's 15 Cv. 2144,
24 right?

25 MS. D'AQUILA: That's right.

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1 THE COURT: That's the first thing I wanted to say. I
2 would like to try and coordinate.

3 The second thing I wanted to say is, if there is no
4 automatic stay under the PSLRA, then there is no stay of
5 discovery pending the outcome of motions to dismiss. I never
6 do that. What I do sometimes is get the document discovery
7 rolling but don't start the depositions until after I have
8 ruled on the motions to dismiss. But I am not even sure that's
9 wise here if some are decided and some are pending.

10 I also saw something in the proposed orders that was
11 troubling, something about there is not going to be any
12 coordination of experts and the defense is expecting every one
13 of the four plaintiffs have completely different experts on the
14 identical subjects. If that's true, that's not acceptable.

15 Why aren't the plaintiffs coordinating on experts?

16 MR. DeLANGE: On behalf of the BlackRock plaintiffs,
17 we have 277 trusts at issue. The other cases have less trusts
18 at issue. And there is a large amount of overlap between these
19 cases but not complete overlap.

20 THE COURT: I didn't ask for complete identity of
21 experts, but on some issues it's identical. Some of the topics
22 that you told me you would have experts on in these proposed
23 orders are the same. Mortgage loan origination practices or
24 something. I can go through and read it out.

25 Here it is. Plaintiffs anticipate that expert

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1 testimony will be necessary for issues including, but not
2 limited:

3 US residential mortgage loan industry. There is no
4 difference from one plaintiff to another on the mortgage loan
5 industry.

6 The mortgage securitization process. Totally common.

7 Duties, standards of care, and practices of an RMBS
8 trustee. Common.

9 Servicing of mortgage loans. Common. Damages may be
10 separate.

11 So there are some that are absolutely identical and
12 you are going to have to coordinate. I am not going to have
13 four experts talking about the US residential mortgage loan
14 industry.

15 MR. DeLANGE: No objection from the BlackRock
16 plaintiffs, provided that it is understood that there may be
17 different issues in our cases or different issues in the other
18 plaintiffs' cases.

19 THE COURT: When there are different issues, I will
20 hear about why there has to be experts. The Court has control
21 here. The Court is not going to have a case with 50 experts.
22 It's not going to happen. It's just not going to happen.

23 MR. DeLANGE: Understood.

24 THE COURT: I am going to say no for years and then
25 you can get a verdict and complain, but you are not going to

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1 have 50 experts. We are just not going to do it.

2 I notice, in fact, that two of the plaintiffs are with
3 the same firm. So you're going to have to coordinate on common
4 topics, such as US residential mortgage loan industry. If you
5 won't, you won't have an expert on it. That's all. I don't
6 need an expert on it anyway. Some fact witness knows all about
7 the residential mortgage loan industry, and I bet they are
8 going to talk about it. So I am not sure it requires an expert
9 at all.

10 Who are you again?

11 MR. WOOD: Mr. Wood on behalf of Royal Park, your
12 Honor.

13 I don't think we ever represented to defendants that
14 we were not willing to coordinate on experts. I think the
15 little conversation we had was that we hadn't figured out
16 exactly who we would be using yet. I don't think there is any
17 disagreement that we will coordinate where we can.

18 THE COURT: That's what I am here to tell you today.
19 When I see the proposed areas and eventually names, I am going
20 to give you a hard time if you don't coordinate on simple
21 things, like the US residential mortgage loan industry. There
22 is one overarching person, if you want to hire them, to talk
23 about what that industry is, or how the securitization process
24 works. Get together and think about it.

25 MR. WOOD: Understood.

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1 THE COURT: Therefore, they won't be telling me they
2 have got to respond to 40 different experts. That was the
3 point. Somewhere on this schedule it says, well, they are not
4 coordinating so maybe we will face ten each and we will have to
5 respond to 40 reports. No.

6 But where there is a unique issue, I understand your
7 point, Mr. DeLange, and that will be fine. But I have control
8 of that.

9 MR. DeLANGE: Understood, your Honor.

10 THE COURT: Before you waste a lot of money, let me
11 hear what you have in mind.

12 So I have touched on this idea of a stay. I have
13 touched on experts.

14 Then there is the number of depositions. I saw in the
15 defense proposal something about 50 and they want 50. I have
16 got to figure out which proposal is which but somewhere I know
17 I read that.

18 MR. WOOD: I think that was correct.

19 THE COURT: I remember the 50 and 50, but now I would
20 just like to find their proposal.

21 Here it is. Williams & Connolly, right?

22 MR. HODGES: That's right.

23 THE COURT: I found it. Give me a minute.

24 It says, HSBC proposes that plaintiffs be permitted to
25 take up to 50 deps in the aggregate and that HSBC be permitted

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1 to take a total of up to 50 deps in the aggregate.

2 I can see why HSBC might actually need to do that,
3 because they are dealing with four different institutions, and
4 they need to find out what people knew and when they knew it
5 and how they decided to invest and all the rest of it. At
6 least I could see 40 almost automatically, ten per plaintiff,
7 but I don't know why you guys would get 50 in aggregate in
8 return. It's all HSBC. You have one defendant here, right?

9 MR. DeLANGE: It is one defendant. Plaintiffs'
10 proposal, we propose 30 depositions.

11 THE COURT: What I am trying to say is it's not equal.
12 They are facing four unique plaintiffs. People have different
13 knowledge of each of those plaintiffs and they do different
14 decisions on how to invest and different diligence and
15 different everything. They need ten, at least, per case.
16 That's 40. But you don't need, just because they get 40, I
17 want 40. That's not what life is. It's not, I want what they
18 get. You have one defendant. Why do you need 30, 40 or 50?

19 MR. DeLANGE: We have multiple third parties -- loan
20 originators, the sponsors, the servicers -- and they differ
21 between the varying trusts. So if you look at three witnesses,
22 potentially there is overlap. But if you have got ten trusts
23 that all have different originators, different sponsors,
24 different servicers, and you need to establish your case
25 through evidence and testimony, then you're going to need them.

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1 THE COURT: But then we are in real trouble. You
2 don't have ten trusts, you have 277. You're going to have
3 2,000 depositions? No.

4 MR. DeLANGE: We are not going to. That's why we
5 proposed 30, because there is overlap between sponsors and
6 originators in trust, but there is not complete overlap.

7 So we are going to need depositions from multiple
8 originators, from multiple sponsors, from multiple servicers,
9 in addition to depositions from HSBC and their witnesses.

10 THE COURT: Let's start off by saying that with
11 respect to HSBC, again, coordination is required. It's like a
12 mini MDL. Four cases, you can only depose the HSBC people
13 together.

14 MR. DeLANGE: Plaintiffs have agreed to that.

15 THE COURT: You can't do HSBC people over and over.
16 One deposition for the 30(b)(6) person, one deposition for the
17 CFO or whatever you decide. Whoever you're deposing, it is one
18 time for the four cases, right?

19 MR. DeLANGE: That's correct, your Honor.

20 If I could address one issue on the depositions of the
21 plaintiffs.

22 THE COURT: Yes.

23 MR. DeLANGE: At least with respect to my clients and
24 the BlackRock case, as the Court is aware, we have asserted
25 these claims derivatively. If that is upheld on the motion to

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1 dismiss that's currently pending, we will proceed derivatively,
2 and the plaintiffs' knowledge and their investment practices
3 doesn't really become an issue. They can certainly enter into
4 discovery of our clients. We are prepared to do that. But
5 having ten depositions of each of our clients about what they
6 invested in, why they invested in it, is not relevant under a
7 derivative. It's really, did they hold the securities at the
8 time the conduct is at issue and are they current holders. I
9 am not sure that having 50 depositions, at least in that
10 situation, makes sense.

11 THE COURT: I will hear from Mr. Hodges.

12 MR. HODGES: I just want to point out that there are
13 actually more than four plaintiffs. In the BlackRock case,
14 there are 184 named plaintiffs. Now, they can be broken down
15 into ten separate groups of funds, but in some of the other
16 cases they are suing in a representative capacity so it's a lot
17 more than four. Frankly, we proposed 50. If we were to just
18 take the 30(b)(6) of named plaintiffs, we wouldn't even come
19 close. So I just wanted to explain the rationale behind it.

20 THE COURT: What about what Mr. DeLange just said
21 about the derivative case, and so it's irrelevant to investment
22 history or strategy or knowledge. He says that's all
23 irrelevant.

24 MR. HODGES: We disagree with that. We think there
25 are issues in the case that would be implicated by a fact

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1 deposition of some of the plaintiffs. Even taking Mr.
2 DeLange's statement as correct, when these certificate holders
3 made their investments, when they held them, how long they held
4 them, and individualized proof of damages will all be relevant
5 to the case.

6 THE COURT: Why don't we bifurcate damages?

7 MR. HODGES: We could do that, your Honor.

8 THE COURT: We need to get some way to move more
9 rapidly towards class certification and/or summary judgment.
10 Let's talk about class certification. How many of
11 these cases have class allegations?

12 MR. WOOD: We have class allegations, Royal Park.

13 MR. DeLANGE: The BlackRock complaints assert class
14 allegations in the alternative.

15 THE COURT: What does that mean? In the alternative,
16 what does that mean?

17 MR. DeLANGE: That means if ultimately it's found, as
18 defendants indicated they were going to challenge whether or
19 not we can bring these claims derivatively, which we think is
20 appropriate, if the Court finds we are not able to bring them
21 derivatively on behalf of the trust, then we are going to
22 pursue those claims under class action on behalf of the
23 investors.

24 THE COURT: But if you can bring them derivatively,
25 then no need for a class?

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1 MR. DeLANGE: Correct.

2 THE COURT: You're pursuing a class action, period.

3 MR. WOOD: That's correct, your Honor. And it wasn't
4 in our statement, but we are perfectly willing to file our
5 motion for class cert within 60 days of an order from the Court
6 on the motion to dismiss.

7 MR. WOLLMUTH: If the Court is curious, NCUA, the
8 government's claims, all direct individual actions, as are the
9 Phoenix Light claims.

10 THE COURT: So neither of you have class.

11 MR. WOLLMUTH: No class, no derivative.

12 THE COURT: You're the only class then.

13 MR. WOOD: Our complaint alleges class.

14 THE COURT: Of the four right now, you're really the
15 only one pursuing the class action.

16 MR. WOOD: I think that's right.

17 THE COURT: The other thing I saw -- again, I think it
18 was in the defense proposal -- and I didn't like it was
19 something like, you should move for class certification X date
20 and then they serve requests for production. They have 30 days
21 to serve it and you have 45 days to answer it. That's not the
22 right order. I rather get the discovery first and then make
23 the motion, because otherwise the motion gets to be a year old
24 before you can even turn to it. I don't like the discovery
25 after the motion. They know you have pled class allegations.

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1 Do the discovery you need now.

2 So let's begin at the beginning. The beginning is,
3 are we having initial disclosures here? I thought the
4 plaintiffs proposed it. I can't remember whether defendants
5 did.

6 MR. WOOD: I think we were in agreement on April 15
7 for initial disclosures.

8 THE COURT: Is that right?

9 MR. HODGES: All parties are in agreement.

10 THE COURT: Then the document requests come when?

11 MR. WOOD: The plaintiffs collectively had proposed
12 that initial document requests be served on April the 17th. I
13 believe that the defendants had proposed that they not be
14 served until two weeks after a ruling on class cert.

15 THE COURT: No, I am not going to do that at all. The
16 point is to make the document requests as early as possible. I
17 didn't think April 17 made a whole lot of sense, only because
18 you need to formulate your document requests after you see what
19 you get. Ordinarily, I would do it a couple of weeks after
20 initial disclosures. Since you're getting initial disclosures
21 April 15, I would say initial document requests should be made
22 by April 29, all parties, defense and plaintiffs. All
23 plaintiffs, everybody, serve document requests.

24 I realize that they will cover many subjects. They
25 will cover class cert issues. They will cover merits issues.

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1 I am not bifurcating class cert and merits. Again, given that
2 there are two direct actions, one potential derivative action,
3 and only one of these four is class, I can't put off merits
4 discovery for a year. So the requests for production served on
5 April 29 should be on all issues. All issues, no bifurcation
6 of class and merits or anything else. Just all issues.

7 Now, once they are served on April 29, I can
8 understand it's a big case and they are not going to be
9 produced in 30 days. So I thought I saw some July date
10 proposed, which is three months from service, but I was hoping
11 more for two months.

12 MR. DeLANGE: That July date was from the plaintiffs'
13 proposal. That was our date to complete.

14 THE COURT: The outside date, but you hope for a
15 rolling production.

16 MR. DeLANGE: And we had a date when the rolling
17 production was to commence.

18 THE COURT: That's too early. If you're not getting
19 them until April 29, I wouldn't think that the rolling
20 production would begin until, let's say, May 22, and then
21 complete by July 24. That would be my hope.

22 MR. HODGES: Your Honor, I understand your desire to
23 get the case moving quickly.

24 THE COURT: The case is.

25 MR. HODGES: I think the enormity of this case cannot

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1 be stressed enough. This is not like another RMBS case to the
2 Court. We have 277 trusts. We have a million mortgage loans
3 at issue. There are 73 separate servicers and master
4 servicers. There are 116 originators.

5 THE COURT: So is this unprecedentedly large or have
6 other judges dealt with the exact same enormity?

7 MR. HODGES: Other cases involving RMBS have involved
8 a specific claim against a specific party.

9 THE COURT: What is the biggest one anybody knows of?

10 MR. HODGES: There are other cases like this that are
11 in the courthouse now, but there are not cases of this enormity
12 prior to this time.

13 THE COURT: Do plaintiffs agree with that?

14 MR. DeLANGE: Your Honor, no, I don't agree with that.
15 There are some very large put-back cases that were brought.

16 THE COURT: There were large what?

17 MR. DeLANGE: Large put-back cases.

18 THE COURT: I can't hear that word.

19 MR. DeLANGE: Put-back. To put back mortgages to the
20 originators and the sponsors. There is an enormous one that
21 was brought against Countrywide and Bank of America.

22 THE COURT: Where?

23 MR. DeLANGE: It was in state court. Ultimately it
24 settled, but they had an Article 77 proceeding going through
25 the settlement, and was it a fair and reasonable settlement,

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1 and there was an enormous amount of discovery that occurred in
2 that case.

3 THE COURT: Is that the one that Judge Kapnick had?

4 MR. DeLANGE: No. That was Judge Kapnick.

5 THE COURT: I said Kapnick.

6 MR. DeLANGE: I'm sorry. I thought you said Kaplan.

7 THE COURT: No, I said Kapnick. I have been reading
8 about that. There was just an appellate division decision. I
9 saw that.

10 MR. DeLANGE: That's exactly right.

11 So, admittedly, this case is large, but I don't
12 believe it's unprecedented that it's not a case that we can
13 manage and conduct discovery.

14 THE COURT: The reason I asked if you can come up with
15 one that was like it is because I might want to see what was
16 done in a similar case. And you really don't know of one in
17 the federal courts or certainly the Southern District of New
18 York or other federal court that has dealt with the numbers he
19 just threw out. The aggregate size of this certainly sounded
20 large. He said a million loans. He said 173 something. He
21 can read all those numbers again, but there was a whole host of
22 numbers that made it sound very, very unprecedented.

23 So, I will ask you again, do you know of one that
24 coordinated so much discovery?

25 MR. DeLANGE: Not in the Southern District of New

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1 York.

2 THE COURT: How about another federal court?

3 MR. DeLANGE: No. I was giving you the example of the
4 cases I was aware of.

5 THE COURT: You gave me that one case.

6 MR. DeLANGE: There is another put-back case against
7 JP Morgan that is going through the same process. There is a
8 settlement, an agreed upon settlement, and now there is
9 discovery into that. So there is discovery proceedings that
10 are being conducted, have been conducted in cases involving
11 similar issues that are at issue here.

12 THE COURT: I remember the one before Judge Kapnick,
13 it had to do with an objector to the settlement. It probably
14 was limited to the issue that that objector raised which is a
15 very different thing. There is no instant settlement on the
16 horizon.

17 Is that right, Mr. Hodges?

18 MR. HODGES: Not to my knowledge, your Honor.

19 THE COURT: So we have to go through the process.

20 So, given the unprecedented size of the production
21 that is going to be made in response to requests, we do have to
22 think about the best way to produce, both in how much time and
23 in what format. What format are we thinking of? Surely, we
24 are all beyond the era of paper. Will there be a virtual
25 repository in a cloud that would be password access for all of

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1 you in one repository? Have you thought about something like
2 that?

3 MR. WOOD: I think that is the kind of discovery
4 format that would be useful here. I think one reason why you
5 perhaps saw separate statements from all the parties is
6 because, while we did propose a coordinated schedule and we are
7 committed to doing that, we have three certificates in our
8 case. So I understand that there are a lot of certificates in
9 that case, but our case is going to be a lot simpler.

10 THE COURT: Which is yours again?

11 MR. WOOD: The Royal Park case. We have three
12 certificates. It's certainly not unprecedented.

13 THE COURT: Three is not a million.

14 MR. WOOD: That's right.

15 So to the extent that there are any extraordinary
16 measures being taken, I am not sure it would be necessary in
17 our action.

18 THE COURT: This happens in MDLs all the time, that
19 the smaller cases are stuck with the schedule that accommodates
20 the larger cases, and sometimes people are unhappy and think an
21 MDL is a black hole. The little cases say, if I were out of
22 this MDL, I could get this done in a year, but because I am in
23 it, it is going to take four years. So I am familiar with that
24 complaint that the smaller cases are kind of stuck in the big,
25 big tent. I understand the problem you're going to have.

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1 Yes. Which one are you?

2 MR. WOLLMUTH: We are NCUA and Phoenix Light.

3 THE COURT: Right.

4 MR. WOLLMUTH: Our firm represents both.

5 Your Honor, I think that this is a large case, but not
6 unprecedented in scope. While I can't direct the Court to one
7 that is similar, because these trustee cases are emerging at
8 this time --

9 THE COURT: I realize that. I had a diagram at one
10 point of all the -- I thought it was BlackRock, but all the
11 BlackRock cases against all the different defendants, and there
12 was a question of whether they could all be coordinated within
13 the court. And the decision was made not to do that. I don't
14 remember the rationale, but that was the court -- the court as
15 a whole, not me. There was a decision made not to coordinate.
16 So I remember when they all came in.

17 MR. WOLLMUTH: So what I was going to offer, your
18 Honor, if it is helpful, while I think the discovery is quite
19 meaningful, we have learned a lot now seven years into the
20 crisis.

21 THE COURT: I was hoping you weren't going to say
22 seven years in the lawsuit because I was going to say where was
23 I.

24 MR. WOLLMUTH: There is no mystery that there were
25 some difficult Countrywide loans, some difficult JP Morgan

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1 loans. So there is a lot of wheel reinventing that will not
2 need to be done here.

3 Also, the ways that you kind of take discovery in
4 these kinds of cases, regarding selection of loans and the
5 quality of the loans and how they were handled, that also has
6 been travelled in cases of related subject matter but different
7 formats.

8 THE COURT: You do some sampling, you take ten out of
9 100 or five out of 200 samples.

10 MR. WOLLMUTH: Exactly. So I could paint a very bad
11 parade of horrors for the discovery in this case if delay was
12 my objective, and I could paint a more streamlined view if that
13 was my objective, and I think that there is a reasonable middle
14 ground.

15 MR. HODGES: If I may, the delay is not my objective;
16 it is to be realistic.

17 THE COURT: What the suggestion is, if there's 277
18 trusts, for example, in the BlackRock case, the suggestion is
19 being made that the Court and parties together pick a
20 bellwether, I guess, or sample trusts and don't even have
21 discovery on the remainder. Up front we have discovery on 27
22 or 15, pick a representative sample, and you do full-blown
23 discovery on those cases and hold up on all the others.

24 Again, that's a well-developed technique in MDLs. I
25 have got an MDL case for over a decade. We do that all the

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1 time. Because if it is an environmental case, sometimes
2 there's 2,000 wells and we pick 20 or 30 as a representative of
3 the others, and we do full discovery on those 30 wells, full
4 motion practice, and then everybody knows essentially what is
5 going to happen.

6 So, I don't know if you can group these 277 into
7 buckets, and then from each bucket pick five loans, and then we
8 would be getting somewhere with how to move discovery forward
9 and maybe motion practice.

10 MR. DeLANGE: Your Honor, the BlackRock plaintiffs
11 have not discussed that concept, and we have not discussed that
12 concept with HSBC.

13 THE COURT: If you did discuss it, it would take us
14 down from this parade of horrors of a million loans -- give
15 me that list again -- a million loans, 177 something.

16 MR. HODGES: I would be happy to. There are 194 named
17 plaintiffs. There are nearly a million loans, just shy of a
18 million; there are 73 servicers or master servicers who are
19 involved in these trusts; there are 53 sponsors or sellers; and
20 there are 116 loan originators.

21 What is unique about this case, why I say it's
22 unprecedented, is because the actions of any one of those third
23 parties is not what is at issue. We are not asking some loan
24 originator to buy back the loans. The allegation is that the
25 trustee is responsible for any alleged breach by any party who

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1 was involved in these trusts. So I think the scope of the
2 allegations itself is what is unprecedented.

3 MR. DeLANGE: Your Honor, if I may, and I want to get
4 back to the sampling of trusts, and I just want to clarify what
5 Mr. Wollmuth was describing that has happened in other cases
6 and other cases of a similar nature. The parties have sampled
7 loans within a trust, not a sampling of only part of the case.
8 So if you have 5,000 loans that are in a trust, you only sample
9 100 for example.

10 THE COURT: Here we have 277 trusts. So even if you
11 just did five loans per trust, you're doing a thousand and
12 you're going to delay your own case for two years. So I am
13 just asking you to consider my suggestion of seeing if the 277
14 could be reduced to five buckets, because they are similar by
15 originator, I heard there are only 53 -- I may have mixed up
16 the figures but something was only 53.

17 Which was the number that was 53?

18 MR. HODGES: The sponsors and the sellers.

19 THE COURT: Sponsors were 53, originators were 161 or
20 something.

21 MR. HODGES: 116.

22 THE COURT: Given that, maybe there are some buckets
23 that could be figured out, and we could take full discovery on
24 some trusts in each bucket, or within a trust so many loans per
25 trust, or we could do both. We can do selecting loans per

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1 trust, and we can try doing what I say, which is only some of
2 the 277 trusts. Otherwise, you're making your own bed and it's
3 not a comfortable bed.

4 Now, it's true that if you were to lose the derivative
5 issue and have to go to class, we can rethink that if need be.
6 But Mr. Wood has only got three trusts so he doesn't need to do
7 any of this to get the discovery in full on all three and move
8 on to class cert.

9 So you're 277 trusts.

10 How many are you, Mr. Wollmuth?

11 MR. WOLLMUTH: Between 40 and 50.

12 THE COURT: In which case?

13 MR. WOLLMUTH: That's combined between NCUA and
14 Phoenix Light.

15 Your Honor, just one thing I wanted to say. We, like
16 Mr. DeLange, will need to speak with the client of course, but
17 we are supportive of the idea. I think it can be productive.
18 The Court may realize this already, but I just wanted to share,
19 this is exactly what the trustees themselves are already doing.
20 You had mentioned the settlement before Justice Kapnick. That
21 was a one-size-fits-all percentage recovery across all trusts.
22 Likewise, the separate trustees that are involved in the JP
23 Morgan settlement that is currently pending before Justice
24 Friedman, likewise, while each trust will have somewhat
25 individual characteristics, it's a settlement that applies

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1 across --

2 THE COURT: That's great if there is a chance of
3 negotiating an early settlement here, but those are sort of
4 unique because they are cart before horse or something like
5 that. They settled early and then you have to figure out how
6 to distribute the settlement. I don't know how they reached
7 the settlement before the discovery.

8 Who was the defendant in Countrywide?

9 MR. WOLLMUTH: Bank of New York was the trustee. I
10 think most of the trustees are in the pending JP Morgan
11 settlement.

12 THE COURT: Most of the trustees here?

13 MR. WOLLMUTH: HSBC I believe is one of the trustees
14 supporting that settlement. But it's US Bank and all the
15 usual -- there is a relatively small universe of trustees.

16 All I am saying is, the procedure of looking across, I
17 wasn't referring to the settlement piece, but --

18 THE COURT: But that's what made it unique.

19 MR. WOLLMUTH: -- the concept of testing across many
20 trusts is not unfamiliar to the parties.

21 THE COURT: I get that. But it's helpful if you're
22 working together. As I remember the settlement, everybody was
23 aligned against the objector. So everybody got together, so to
24 speak, to defeat the objector. We are not there yet. We are
25 adversarial. The back table and the front table aren't

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1 together.

2 MR. DeLANGE: I will just bring it all the way back to
3 where we started with the Court's suggestion of choosing a
4 sampling of trusts within the 277.

5 THE COURT: And a sampling of loans within --

6 MR. DeLANGE: Correct. And it's really an issue for
7 my case as opposed to my other plaintiffs' cases.

8 THE COURT: I don't know, 40 to 50 is a lot too. If
9 you discovered them in full, that's a lot of documents.

10 MR. DeLANGE: To answer one outstanding question, you
11 asked if we could put our trust into buckets.

12 THE COURT: I did.

13 MR. DeLANGE: The short answer to that is, yes,
14 absolutely. And I can't give you a definitive bucket as I
15 stand here today --

16 THE COURT: I didn't ask you to.

17 MR. DeLANGE: -- but we can certainly put them into
18 buckets, and I am more than happy to meet and confer with HSBC
19 on the trusts that go into the buckets, why they are in the
20 buckets, and which trust we conduct full discovery on.

21 THE COURT: Let's try that idea. Let's think about a
22 virtual document repository so productions are made only once
23 and are made electronically and are made in a common format.
24 In the electronic era we have to consider form of production
25 too, and obviously it has to be a searchable form, and you want

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1 to share with one another's tech people what form is going to
2 be good for everybody. One form, one platform, one review
3 area. We can't be doing it differently by plaintiff and the
4 defendant wants to produce only once.

5 Then there is going to be some production from
6 plaintiffs too, right? So, again, you will want the defendant
7 to specify in what format it wants to receive documents.

8 The rules contemplate doing it that way anyway. The
9 2006 rules say, in your request you should specify how you want
10 things produced. So when you serve these document requests on
11 April 29, think about the form of production, because we don't
12 need that in this case. One of the terrible things I do from
13 time to time, because I speak so much on the subject, is this
14 always looking-back disputes because people were not clear
15 about the form, and then it comes in in some disorganized way
16 and it's years of disputes. What a waste of judicial time and
17 everybody else, and the money and time of the lawyers. So
18 given the expertise in this room, we can get it right forward,
19 not looking backward. So please be very conscious of one form
20 of production all around.

21 It doesn't have to be the same for plaintiff and
22 defendant, but I am saying when defendant produces, it's
23 whatever all plaintiffs want, and when plaintiffs produce, it's
24 what defendants want, unless there is a real dispute about it.
25 There shouldn't be. You should be able to get together on

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1 that. Certainly, the defendants are using experts to pull it
2 together. I suspect you are too.

3 Where are we up to in briefing schedules on motions to
4 dismiss? Do we have schedules on everybody's motions or only
5 some motions?

6 MR. DeLANGE: On behalf of the BlackRock plaintiffs,
7 the motions to dismiss are fully briefed.

8 THE COURT: Your 12(b)(6) part.

9 MR. DeLANGE: Correct.

10 THE COURT: We took care of 12(b)(1).

11 MR. DeLANGE: As you may recall, the 12(b)(6) motion
12 was a joint motion as to Phoenix Light, Royal Park, and
13 BlackRock.

14 THE COURT: That's all done.

15 MR. DeLANGE: The one outstanding is the NCUA.

16 MR. HODGES: There is actually a wrinkle to BlackRock,
17 your Honor. If you will recall, briefing as to the BlackRock
18 trusts only involved the indenture trust. There are 244 PSA
19 trusts.

20 What we would propose doing, for the sake of
21 convenience and simplicity, is to file a letter motion where we
22 incorporate by reference our arguments in the pending 12(b)(6)
23 motion to the 244 PSA trusts in BlackRock.

24 THE COURT: What you're saying is it raises the same
25 issues and it doesn't need separate briefing.

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1 MR. HODGES: Correct. With respect to the 244 PSA
2 trusts, that is correct.

3 THE COURT: So, basically, your letter will just say,
4 the outward pending motion will control these also.

5 MR. HODGES: Correct, your Honor.

6 THE COURT: So three of them are scheduled.

7 Now, what are we doing about NCUA?

8 MS. D'AQUILA: For NCUA, we recently received a letter
9 from the defendants and they proposed a briefing schedule, and
10 we have no objections to their proposed schedule, which is very
11 similar in time to the same schedule set forth in the other
12 plaintiffs' actions.

13 THE COURT: Similar in terms of?

14 MS. D'AQUILA: In terms of length of time.

15 THE COURT: So what is the proposal again?

16 MS. D'AQUILA: The motion to dismiss on behalf of the
17 defendant would be submitted on April 27. NCUA's opposition
18 would be May 18. And the defendant's replies would be June 1.

19 THE COURT: That's reasonable. OK.

20 That's a 12(b)(6) also?

21 MR. HODGES: That's a 12(b)(6).

22 THE COURT: Does it raise the same issues as the
23 pending 12(b)(6) though?

24 MR. HODGES: I take that back. There are standing
25 issues and there are additional issues that are unique to NCUA.

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1 THE COURT: How about the ones that are common? Can't
2 your letter on the 244 trusts, that we will live with the
3 ruling that you make in the pending motion, to the extent that
4 you would raise those issues in the NCUA case, can we say that
5 the ruling will govern that too and you will only brief the
6 non-duplicative issues?

7 MR. HODGES: We will do that, your Honor.

8 THE COURT: The letter will cover that too. So what
9 the briefing will be on April 27 is anything that's not raised
10 in the pending 12(b)(6). Whatever is raised there will be
11 covered in the decision.

12 MR. HODGES: We do expect to have some unique issues.

13 THE COURT: You said that. But not a repeat of what
14 you say is deficiencies.

15 MR. HODGES: Correct, your Honor.

16 THE COURT: Which takes us back to the class
17 certification issues. I am not going to schedule that until
18 the document production is complete. Maybe even some
19 depositions that are targeted to class cert issues if needed.

20 So I am not going to be setting that early on. The
21 request for production, as I said, should include the issues
22 you want to raise, or either side wants to raise on class cert,
23 and then maybe the parties will sit down -- basically you,
24 Mr. Wood, sit down with Mr. Hodges, or one of the group
25 there -- and talk about what would be the minimum deps needed

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1 to be ready to adjudicate the class cert motion. Then we can
2 get a briefing schedule that just goes brief to brief to brief
3 and we are ready. But the idea that we would bifurcate the
4 merits doesn't really work in today's new world of class cert.
5 There's always overlap now and there's always some experts that
6 actually have to be discovered as part of the class cert
7 effort. That's sort of the new post Comcast world.

8 MR. WOOD: Understood.

9 THE COURT: So that may include some expert discovery,
10 some Daubert challenges, all of that before we can finalize
11 class cert. So I am not prepared to set that date today. I
12 think we are just going to stop at the document phase and then
13 have a status conference.

14 So it seems like a half hour ago we were talking about
15 the rolling production beginning, I think I said May 22. I
16 still like that. But Mr. Hodges said, it wasn't at all
17 realistic to say, and all documents by June 26, that's just not
18 realistic.

19 So, falling back to your proposed date, did somebody
20 propose July 24 or something like that?

21 MR. DeLANGE: That was the plaintiffs' proposed date.

22 THE COURT: What do you say to that, Mr. Hodges?

23 MR. HODGES: I say that is still very, very
24 aggressive, and I think it's going to be particularly
25 aggressive for plaintiffs, to be quite honest.

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1 THE COURT: Three months from when the requests come
2 in?

3 MR. HODGES: I do, your Honor. I think it's going to
4 be a lot of documents to produce, to review, to process.

5 THE COURT: Actually, we don't know that now because
6 until plaintiffs consider the suggestions made at today's
7 conference, with respect to the sampling, buckets, and all
8 that, until they think about that, maybe that would reduce the
9 volume such that July 24 becomes realistic. So maybe we don't
10 set the cutoff until we have a status conference a couple of
11 months after the requests are out, and people have met and
12 conferred and talked about form and talked about a single
13 repository and how to arrange it, and then we can set a cutoff.
14 So maybe it doesn't make sense to set a cutoff today. Instead,
15 I think I should set a conference for late June, which is two
16 months after the service, and see where we are.

17 Does that sound acceptable?

18 MR. HODGES: It does, your Honor.

19 MR. DeLANGE: Setting the conference sounds
20 acceptable. The one clarification that I would like to add is
21 we did put in a date to commence the production of documents.

22 THE COURT: I agreed. I don't know what you put, but
23 I said May 22.

24 MR. DeLANGE: That's what I have down. I just want to
25 make sure that date still holds.

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1 THE COURT: I think you should produce what you can.
2 There are some that are low-hanging fruit. There's always some
3 that are easier than others. Once you agree on a form and how
4 to do it and where to do it, you should begin to do it. I
5 agree. And that's one of the things we can discuss at the
6 conference in June. If I hear from you that you haven't gotten
7 a single document, that's not good. And if I hear from them
8 that you haven't produced a single document, that's not good.
9 So that's why, if the requests go out in April, I am going to
10 have the conference two months later, I should have some sense
11 of how it's going.

12 What is it, Mr. Wollmuth?

13 MR. WOLLMUTH: Your Honor, does it make any sense to
14 try to see if the parties can narrow the inquiry as to how
15 there can be buckets made or samples drawn so that we can
16 perhaps submit to the Court before we are next together the
17 areas where we have commonality and areas where we are apart?

18 THE COURT: Of course. That's what I thought you
19 would be doing in the next two months, is meeting and
20 conferring on exactly that.

21 MR. WOLLMUTH: Thank you, your Honor.

22 THE COURT: I am just looking for a June date.

23 How about Wednesday, June 24 at 4:30? Is that OK?

24 MR. HODGES: It is, your Honor.

25 THE COURT: I will just call it a status. In fact, I

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1 will call it discovery status. By then, actually, even the
2 last motion will be in, the one that is fully submitted.

3 So that's 4:30 on June 24.

4 I will issue an order that's limited to the dates I
5 have set here and no more. I won't go through all of this
6 stuff yet. We will see how we progress and talk about it again
7 in June. We won't have any depositions till then at all. But
8 you will be thinking, Mr. Wood, about who and how many you need
9 directed to class cert. And I guess Mr. Hodges and everybody
10 in the back table will think along the same lines, but they
11 won't need very many when we are talking about three trusts.
12 So we can discuss that at the June conference also, direct our
13 attention to what might be needed to get ready for the class
14 cert motion.

15 So, does anybody think we need to do more today? I
16 can't think of any other topic except settlement. I don't know
17 how those were reached in those other two cases, Countrywide
18 and JP Morgan, but I usually say in my run-of-the-mill cases
19 that I like to assign all my cases to either a magistrate judge
20 or the court of next mediation program for a settlement effort.
21 But this doesn't strike me as amenable to either of those two
22 choices just now. If you folks want to be talking, you know
23 how to do it, directly or through a private mediation. But
24 just to send you off to some court of next randomly selected
25 mediator doesn't make sense to me. Even the magistrate judge,

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1 since I am handling the discovery myself, that person would be
2 saying, OK, I am here to help you settle, but how do you settle
3 this before any discovery, or any sense of the scope of it, or
4 the motions to dismiss are decided. So I think I will let that
5 go too for a while.

6 So I don't have any other topics. Do you, folks?

7 MR. DeLANGE: Nothing else from the BlackRock
8 plaintiffs, your Honor.

9 MR. WOLLMUTH: Nothing further for NCUA and Phoenix
10 Light.

11 MR. HODGES: Nothing from us.

12 THE COURT: Thank you. Good to see you all.

13 (Adjourned)

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